

House Engrossed Senate Bill

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

CHAPTER 196

SENATE BILL 1316

AN ACT

AMENDING SECTIONS 26-102, 36-446.04, 41-619.51, 41-1758 AND 41-1758.01,
ARIZONA REVISED STATUTES; RELATING TO FINGERPRINTING REQUIREMENTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 26-102, Arizona Revised Statutes, is amended to
3 read:

4 26-102. Powers and duties of the adjutant general

5 A. The adjutant general shall serve as head of the department. The
6 governor as commander in chief shall administer and control the national
7 guard, and the adjutant general is responsible to the governor for execution
8 of all orders relating to the militia, organization, activation,
9 reactivation, inactivation and allocation of units, recruiting of personnel,
10 public relations and discipline and training of the national guard and those
11 members of the militia inducted into the service of this state as provided in
12 this chapter. The adjutant general shall act as military chief of staff to
13 the governor and chief of all branches of the militia. The adjutant general
14 may belong to the national association and other organizations for the
15 betterment of the national guard, subscribe to and obtain periodicals,
16 literature and magazines of such other organizations and pay dues and charges
17 from monies of this state appropriated for that purpose. Except for the
18 authority expressly reserved for the governor, the adjutant general is
19 responsible for emergency management and all emergency activities are subject
20 to the approval of the adjutant general.

21 B. The adjutant general, as the military chief of staff, shall:

22 1. Act as military advisor to the governor and perform, as the
23 governor prescribes, military duties not otherwise designated by law.

24 2. Adopt methods of administration for the national guard that are not
25 inconsistent with laws and regulations of the United States department of
26 defense or any subdivision of the United States department of defense.

27 3. Supervise and direct the organization, regulation, instruction and
28 other activities of the national guard.

29 4. Attest and record all commissions issued by the governor and
30 maintain a register of all commissioned personnel.

31 5. Keep a record of all orders and regulations pertaining to the
32 national guard and all other writings and papers relating to reports and
33 returns of units comprising the national guard and militia.

34 6. Superintend the preparation of returns, plans and estimates
35 required by this state, by the department of the army, air force or navy and
36 by the secretary of defense.

37 7. Control the use of and care for, preserve and maintain all military
38 property belonging to or issued to this state and pay from monies
39 appropriated by the legislature for these purposes the necessary expenses for
40 labor and material incurred in the repair of military property.

41 8. Dispose of unserviceable military property belonging to this state,
42 account for the proceeds and transmit them to the morale, welfare and
43 recreational fund established by section 26-153.

44 9. Authenticate with the seal of the office of the adjutant general
45 all orders and copies of orders issued by the adjutant general's office. An
46 authenticated copy has the same force and effect as the original.

1 10. Present to the governor before each regular session of the
2 legislature, or as otherwise required, an estimate of the financial
3 requirements for state monies for operation of the department and the
4 national guard during the next fiscal year.

5 C. The adjutant general, as head of the department, shall:

6 1. Be the administrator of the department.

7 2. Coordinate the functions of the divisions and offices of the
8 department.

9 3. Appoint, suspend, demote, promote or dismiss employees of the
10 department WHO ARE subject to the ~~provisions of~~ title 41, chapter 4, article
11 5 and employees who are exempt from state personnel administration. The
12 adjutant general may delegate this authority.

13 4. Appoint an auditor for the department to conduct periodic financial
14 and compliance audits of each division and office in the department and
15 perform such other duties as prescribed by law. At least annually the
16 auditor shall audit accounts that are open for more than twelve months. The
17 auditor shall determine within the department compliance with purchase and
18 bidding procedures prescribed by law.

19 5. Adopt, with the approval of the governor, rules necessary for the
20 operation of the department.

21 6. Establish and administer accounts for federal, state or other
22 monies made available to carry out the functions of the department.

23 7. As deemed necessary, appoint to peace officer status members of the
24 Arizona national guard who have been awarded a United States army military
25 occupational specialty as military policeman or a United States air force
26 specialty code as security policeman. Prior to appointment as peace
27 officers, such individuals must successfully complete a course of study to be
28 prescribed by the Arizona peace officer standards and training board.
29 Individuals appointed as peace officers pursuant to this section, when
30 performing duties at facilities or on land operated or controlled by or under
31 the jurisdiction of the adjutant general, ~~shall~~ have all the powers,
32 privileges and immunities of peace officers provided by law. Individuals
33 appointed as peace officers pursuant to this section are not eligible to
34 participate in funding provided by the peace officers' training fund
35 established by section 41-1825 or in the public safety personnel retirement
36 system.

37 8. Establish, abolish or reorganize the positions or organizational
38 structure within the department, subject to legislative appropriation, if, in
39 the adjutant general's judgment, the modification would make the operation of
40 the department more efficient, effective or economical.

41 9. Establish an educational program for persons who have previously
42 dropped out of high school and who are under twenty years of age but who are
43 not adjudicated delinquent. The educational program shall be designated
44 "project challenge", and the program shall be conducted by the national guard
45 of Arizona in a paramilitary environment. The goal of the educational
46 program is to provide persons enrolled in the program with the knowledge and

1 skills necessary to become productive citizens and to obtain a general
2 equivalency diploma. In addition to monies appropriated for the program, the
3 adjutant general may accept and spend monies from any other lawful public or
4 private source. EACH EMPLOYEE OF THE PROGRAM WHO HAS CONTACT WITH A PROGRAM
5 PARTICIPANT MUST HAVE A VALID FINGERPRINT CLEARANCE CARD ISSUED PURSUANT TO
6 TITLE 41, CHAPTER 12, ARTICLE 3.1 OR PROVIDE TO THE DEPARTMENT DOCUMENTATION
7 OF THE PERSON'S APPLICATION FOR A FINGERPRINT CLEARANCE CARD. THE EMPLOYEE
8 MUST CERTIFY ON FORMS THAT ARE PROVIDED BY THE DEPARTMENT AND THAT ARE
9 NOTARIZED WHETHER THE EMPLOYEE IS AWAITING TRIAL ON OR HAS EVER BEEN
10 CONVICTED OF ANY OF THE CRIMINAL OFFENSES LISTED IN SECTION 41-1758.03,
11 SUBSECTIONS B AND C IN THIS STATE OR SIMILAR OFFENSES IN ANOTHER STATE OR
12 JURISDICTION. IF A PERSON WHO IS HIRED BY THE DEPARTMENT AS A PROJECT
13 CHALLENGE WORKER DOES NOT HAVE A FINGERPRINT CLEARANCE CARD AT THE TIME OF
14 EMPLOYMENT, THE PERSON MUST APPLY FOR A FINGERPRINT CLEARANCE CARD ON OR
15 BEFORE THE SEVENTH DAY FOLLOWING THE DATE THE PERSON WAS HIRED.

16 10. Submit to the governor annually by October 1 a report for the
17 department including the strength and condition of the national guard, the
18 business transactions of the department, a detailed statement of expenditures
19 for all military and civilian purposes and the disposition of all military
20 and civilian property on hand or issued.

21 D. The adjutant general, with the approval of the governor, may:

22 1. Enter into contracts with individuals, this state, political
23 subdivisions of this state or the federal government and its agencies for the
24 purchase, acquisition, rental or lease of lands, buildings or military
25 materiel and take title in the name of this state for the establishment and
26 maintenance of armories, subject to legislative appropriation for these
27 purposes.

28 2. Procure and contract for procurement of equipment and its issuance
29 to members of the militia inducted into the service of this state.

30 3. Enter into agreements and plans with the state universities,
31 community colleges or any educational institution supported by federal or
32 state monies for promotion of the best interests of the national guard and
33 military training of students of the institutions.

34 4. Lease property acquired under this chapter for any public purpose
35 for a period of one year that is renewable.

36 5. Convey for any public purpose in the name of this state easements
37 on real property acquired under this chapter.

38 6. Enter into contracts or agreements with the federal government that
39 are deemed to be in the best interest of this state and the national guard.

40 7. Delegate the powers and duties in this section.

1 Sec. 2. Section 36-446.04, Arizona Revised Statutes, is amended to
2 read:

3 36-446.04. Qualifications; period of validity; exemption

4 A. The board shall issue a license as a nursing care institution
5 administrator pursuant to its rules to any person who meets the following
6 qualifications:

7 1. Is of good character.
8 2. Has satisfactorily completed a course of instruction and training
9 approved by the board that:

10 (a) Is designed and sufficiently administered to give the applicant
11 knowledge of the proper needs to be served by nursing care institutions.

12 (b) Includes a thorough background in the laws and rules governing the
13 operation of nursing care institutions and the protection of the interests of
14 the patients in nursing care institutions.

15 (c) Includes thorough training in elements of good health care
16 facilities administration.

17 3. Has passed an examination administered by the board designed to
18 test for competency in the subject matter referred to in this subsection.

19 4. HAS MET ONE OF THE FOLLOWING FINGERPRINTING REQUIREMENTS:

20 (a) HAS A VALID FINGERPRINT CLEARANCE CARD ISSUED PURSUANT TO TITLE
21 41, CHAPTER 12, ARTICLE 3.1.

22 (b) HAS PROVIDED PROOF OF THE SUBMISSION OF AN APPLICATION FOR A
23 FINGERPRINT CLEARANCE CARD. AN APPLICANT WHO HAS BEEN DENIED A FINGERPRINT
24 CLEARANCE CARD MUST ALSO PROVIDE PROOF THAT THE APPLICANT QUALIFIES FOR A
25 GOOD CAUSE EXCEPTION HEARING PURSUANT TO SECTION 41-619.55.

26 B. A PERSON WHO IS LICENSED PURSUANT TO THIS SECTION MUST MAINTAIN A
27 VALID FINGERPRINT CLEARANCE CARD DURING THE VALID PERIOD OF THE PERSON'S
28 LICENSE.

29 ~~B.~~ C. The board shall issue a certificate as an assisted living
30 facility manager pursuant to its rules to a person who meets the following
31 qualifications:

32 1. Is of good character.
33 2. Has satisfactorily completed a course of instruction and training
34 approved by the department.

35 3. Has passed an examination administered by the board.

36 4. Provides documentation satisfactory to the board that the applicant
37 has completed two thousand eighty hours of paid work experience in a health
38 related field within the preceding five years as prescribed by board rule.

39 5. HAS MET ONE OF THE FOLLOWING FINGERPRINTING REQUIREMENTS:

40 (a) HAS A VALID FINGERPRINT CLEARANCE CARD ISSUED PURSUANT TO TITLE
41 41, CHAPTER 12, ARTICLE 3.1.

42 (b) HAS PROVIDED PROOF OF THE SUBMISSION OF AN APPLICATION FOR A
43 FINGERPRINT CLEARANCE CARD. AN APPLICANT WHO HAS BEEN DENIED A FINGERPRINT
44 CLEARANCE CARD MUST ALSO PROVIDE PROOF THAT THE APPLICANT QUALIFIES FOR A
45 GOOD CAUSE EXCEPTION HEARING PURSUANT TO SECTION 41-619.55.

1 D. A PERSON WHO IS CERTIFIED PURSUANT TO THIS SECTION MUST MAINTAIN A
2 VALID FINGERPRINT CLEARANCE CARD DURING THE VALID PERIOD OF THE PERSON'S
3 CERTIFICATE.

4 ~~E.~~ E. In lieu of the requirements contained in subsection A,
5 paragraph 2 or subsection B- C, paragraph 2, an applicant may present
6 satisfactory evidence to the board of sufficient education and training in
7 the areas listed in that paragraph.

8 ~~D.~~ F. A license is nontransferable and remains in effect until the
9 following June 30 of an even numbered year at which time the license may be
10 renewed if the licensee otherwise complies with this article and unless the
11 license has been surrendered, suspended or revoked.

12 ~~E.~~ G. A certificate is nontransferable and remains in effect until
13 the following June 30 of an odd numbered year at which time the certificate
14 may be renewed if the certificate holder otherwise complies with this article
15 and the certificate has not been surrendered, suspended or revoked.

16 ~~F.~~ H. This section does not apply to managers of adult foster care as
17 defined in section 36-401.

18 Sec. 3. Section 41-619.51, Arizona Revised Statutes, is amended to
19 read:

20 41-619.51. Definitions

21 In this article, unless the context otherwise requires:

22 1. "Agency" means the supreme court, the department of economic
23 security, the department of education, the department of health services, ~~or~~
24 the department of juvenile corrections, THE DEPARTMENT OF EMERGENCY AND
25 MILITARY AFFAIRS OR THE BOARD OF EXAMINERS OF NURSING CARE INSTITUTION
26 ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS.

27 2. "Board" means the board of fingerprinting.

28 3. "Expedited review" means an examination, in accordance with board
29 rule, of the documents an applicant submits by the board or its hearing
30 officer without the applicant being present.

31 4. "Facility" or "program" means state facilities or programs that
32 provide direct services to adults with developmental disabilities or to
33 juveniles.

34 5. "Good cause exception" means the issuance of a fingerprint
35 clearance card to an employee pursuant to section 41-619.55.

36 6. "Person" means a person who is required to be fingerprinted
37 pursuant to any of the following:

38 (a) Section 8-105.

39 (b) Section 8-322.

40 (c) Section 8-509.

41 (d) Section 8-802.

42 (e) Section 15-183.

43 (f) Section 15-534.

44 (g) Section 15-1330.

45 (h) SECTION 26-102.

46 ~~(h)~~ (i) Section 36-411.

1 ~~(i)~~ (j) Section 36-425.03.

2 (k) SECTION 36-446.04

3 ~~(j)~~ (l) Section 36-594.01.

4 ~~(k)~~ (m) Section 36-594.02.

5 ~~(l)~~ (n) Section 36-882.

6 ~~(m)~~ (o) Section 36-883.02.

7 ~~(n)~~ (p) Section 36-897.01.

8 ~~(o)~~ (q) Section 36-897.03.

9 ~~(p)~~ (r) Section 36-3008.

10 ~~(q)~~ (s) Section 41-1964.

11 ~~(r)~~ (t) Section 41-1967.01.

12 ~~(s)~~ (u) Section 41-1968.

13 ~~(t)~~ (v) Section 41-1969.

14 ~~(u)~~ (w) Section 41-2814.

15 ~~(v)~~ (x) Section 46-141, subsection A.

16 ~~(w)~~ (y) Section 46-321.

17 Sec. 4. Section 41-1758, Arizona Revised Statutes, is amended to read:
18 41-1758. Definitions

19 In this article, unless the context otherwise requires:

20 1. "Agency" means the supreme court, the department of economic
21 security, the department of education, the department of health services, ~~or~~
22 the department of juvenile corrections, THE DEPARTMENT OF EMERGENCY AND
23 MILITARY AFFAIRS OR THE BOARD OF EXAMINERS OF NURSING CARE INSTITUTION
24 ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS.

25 2. "Division" means the fingerprinting division in the department of
26 public safety.

27 3. "Facility" or "program" means state facilities or programs that
28 provide direct services to adults with developmental disabilities or to
29 juveniles.

30 4. "Good cause exception" means the issuance of a fingerprint
31 clearance card to an employee pursuant to section 41-619.55.

32 5. "Person" means a person who is required to be fingerprinted
33 pursuant to any of the following:

34 (a) Section 8-105.

35 (b) Section 8-322.

36 (c) Section 8-509.

37 (d) Section 8-802.

38 (e) Section 15-183.

39 (f) Section 15-534.

40 (g) Section 15-1330.

41 (h) SECTION 26-102.

42 ~~(h)~~ (i) Section 36-411.

43 ~~(i)~~ (j) Section 36-425.03.

44 (k) SECTION 36-446.04.

45 ~~(j)~~ (l) Section 36-594.01.

46 ~~(k)~~ (m) Section 36-594.02.

- 1 ~~(l)~~ (n) Section 36-882.
- 2 ~~(m)~~ (o) Section 36-883.02.
- 3 ~~(n)~~ (p) Section 36-897.01.
- 4 ~~(o)~~ (q) Section 36-897.03.
- 5 ~~(p)~~ (r) Section 36-3008.
- 6 ~~(q)~~ (s) Section 41-1964.
- 7 ~~(r)~~ (t) Section 41-1967.01.
- 8 ~~(s)~~ (u) Section 41-1968.
- 9 ~~(t)~~ (v) Section 41-1969.
- 10 ~~(u)~~ (w) Section 41-2814.
- 11 ~~(v)~~ (x) Section 46-141, subsection A.
- 12 ~~(w)~~ (y) Section 46-321.

13 6. "Vulnerable adult" has the same meaning prescribed in section
14 13-3623.

15 Sec. 5. Section 41-1758.01, Arizona Revised Statutes, is amended to
16 read:

17 41-1758.01. Fingerprinting division; duties

18 The fingerprinting division is established in the department of public
19 safety and shall:

20 1. Conduct fingerprint background checks for persons and applicants
21 who are seeking employment with licensees, contract providers and state
22 agencies that require fingerprint background checks pursuant to sections
23 8-105, 8-322, 8-509, 8-802, 15-183, 15-534, 15-1330, 26-102, 36-411,
24 36-425.03, 36-446.04, 36-594.01, 36-594.02, 36-882, 36-883.02, 36-897.01,
25 36-897.03, 36-3008, 41-1964, 41-1967.01, 41-1968, 41-1969 and 41-2814,
26 section 46-141, subsection A and section 46-321.

27 2. Issue fingerprint clearance cards. On issuance, a fingerprint
28 clearance card becomes the personal property of the cardholder and the
29 cardholder shall retain possession of the fingerprint clearance card.

30 3. On submission of an application for a fingerprint clearance card,
31 collect the fees established by the board of fingerprinting pursuant to
32 section 41-619.53 and deposit, pursuant to sections 35-146 and 35-147, the
33 monies collected in the board of fingerprinting fund.

34 4. Inform in writing each person who submits fingerprints for a
35 fingerprint background check of the person's right to petition the board of
36 fingerprinting for a good cause exception pursuant to section 41-1758.03.

37 5. Administer and enforce this article.

38 Sec. 6. Project challenge workers; fingerprint clearance cards;
39 current workers

40 Notwithstanding section 26-102, subsection C, paragraph 9, Arizona
41 Revised Statutes, as amended by this act, the department of emergency and
42 military affairs may continue to employ a project challenge worker who was
43 hired before the effective date of this act and who does not have a
44 fingerprint clearance card if the employee submits an application for a
45 fingerprint clearance card within sixty days after the effective date of this
46 act and the application is not denied.

~~APPROVED BY THE GOVERNOR MAY 8, 2007.~~

~~FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 9, 2007.~~